

### REMARKS

With entry of this amendment, claims 1-52, 53-55, 57, 58, 60-62, 64-67, 96-112, 198, and 199 are pending in the application. By this amendment, claims 53, 56, 59, 63, 67-95, and 113-197 have been cancelled as being being drawn to non-elected subject matter or for clarification in accordance with the Examiner's suggestions. Pursuant to informal interviews conducted with Examiner Chen on September 21, 2004, and November 2, 2004, claims 100-108, and 198-199 are presented for prospective rejoinder. By this amendment, the specification is amended to clarify the earlier-presented priority claim, which clarification includes elimination of certain cross-references previously presented and approved by the Office. Also by this amendment, claim 100 has been amended for clarity in accordance with the Examiner's suggestions. All subject matter withdrawn or cancelled herein is removed from prosecution without prejudice, to advance issuance of the application, without prejudice or acquiescence to the merits of any positions asserted by the Office, and Applicant fully reserves the right to pursue all subject matter amended, cancelled or withdrawn herein in a related application. The amendments herein are fully supported by the specification, and no new matter has been added to the application. Entry of this amendment and consideration of the accompanying remarks is earnestly solicited.

### Priority

Applicant's amendment filed August 20, 2003 amended the priority claim in the instant application to claim benefit of prior-filed applications comprehensive of all applications included in the corrected priority statement presented herein above. In an Office Action dated 10/21/2003 (Paper No. 18) the Office objected to the amended priority and proposed that Applicant file a petition to accept an unintentionally delayed priority claim under 37 CFR 1.78. Applicant filed such petition under 37 CFR 1.78 (a)(3)(i-iii) on December 4, 2003. A decision on this petition was extensively delayed, and was not rendered by the Office until August 23, 2004. At this time a decision dismissing the petition was presented by the Petitions Office. Applicant's representative promptly contacted Senior Petitions Attorney Douglas Wood, who noted the prejudicial nature of the Office's long delay on the original petition, and invited Applicant to submit a renewed petition to accept the unintentionally delayed priority claim under 37 CFR 1.78. The renewed petition was submitted by Applicant and received by the Office on

August 26, 2004, and a decision granting the petition was rendered on September 14, 2003.

In view of the foregoing, the amended priority claim for the instant application, which comprehends all revised priority relationships originally presented in the amendment submitted on August 20, 2003 (which set forth an amended priority claim comprehensive of each priority relationship set forth herein above) and subject of the petition filed December 4, 2003 and the renewed petition filed August 26<sup>th</sup>, 2004, is believed to have been duly perfected--including by satisfaction of the copendency requirement relating to U.S. Patent Application No. 09/847,173 (which issued as U.S. Patent No. 6,790,449 on September 14, 2004). Acknowledgement of this perfected priority claim consistent with the granted Decision on Petitions mailed September 14, 2004 is respectfully requested.

#### **Patentability Under 35 USC § 112, Second Paragraph**

Applicants acknowledge that the Office has reconsidered and withdrawn the prior rejection of claims 96-97 under 35 U.S.C. 112, second paragraph. All other claims in the application as presented herein are respectfully submitted to fully comply with this Section of the Act.

#### **Patentability Under 35 USC § 112, First Paragraph**

Applicants acknowledge that the Office has reconsidered and withdrawn the prior rejection of claims 1-67, 96-99 and 109-112 under 35 U.S.C. 112, first paragraph. All other claims in the application as presented herein are respectfully submitted to fully comply with this Section of the Act.

#### **Patentability Under 35 USC § 103**

Claims 1-67, 96-99 and 109-112 stand rejected under 35 U.S.C. 103(a) as allegedly obvious over Collins (6,264,957) in view of Ball *et al* (J: *Virol.*, 1999,73:4705-4712), for reasons of record. Applicants maintain traverse of the asserted grounds of rejection, based on the evidence and remarks presented in the record. However, Applicants respectfully submit that the stated grounds for rejection are overcome by the previously-submitted Statement Regarding Common Ownership and Obligation of

Assignment, and are further obviated by the amendment of priority in the application, as previously noted.

### **Double Patenting**

Claim 1 is provisionally rejected under the judicially created doctrine of obviousness- type double patenting as allegedly unpatentable over claim 9 of copending Application No. 09/602,212. Claims 1, 2, 8 and 12 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 9-10 of copending Application No. 09/611,829 in view of Collins (6,264,957).

With respect to the double patenting rejection over the '212 application, Applicants note the provisionality of this rejections and respectfully decline to address the merits of the rejection until allowable subject matter is indicated in one of the allegedly conflicting applications, at which time appropriate action will be taken. More specifically, Applicants request allowance of the instant case and redirection of the Office's examination of double patenting issues to the cited, currently pending '212 application, which Applicants confirm are both presently pending without Notice of Allowance.

With respect to the double patenting rejection over the '829 application, Applicants note that this case issued on March 30, 2004 as USPN 6,713,066. To obviate the current double patenting rejection, now regarded as non-provisional, Applicants will promptly prepare and file a Terminal Disclaimer over the '066 patent, under separate cover. This action is to be taken without prejudice, i.e., without acquiescence or representation concerning the merits of the double patenting issues raised by the Office.

### **Statement Regarding Deposited Materials**

All biological materials identified in the instant application as having been deposited by Applicants were deposited in full compliance with the terms of the Budapest Treaty. All requirements of 37 CFR § 1.808, and all other applicable statutory requirements and rules pertaining to biological deposits, have likewise been satisfied, or will be satisfied, as required for grant and enforcement of the instant application and prospective patent(s) to issue here from. All restrictions imposed by the depositor on the availability to the public of the deposited material requested in compliance with the

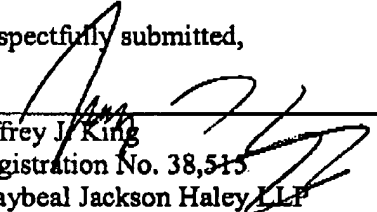
provisions of 37 CFR § 1.808, will be irrevocably removed upon the granting of a patent in the instant application. No other representations are made of record herein concerning the significance of biological deposits with respect to patentability and enforceability of the instant application and prospective patent(s) to issue here from.

### CONCLUSION

In view of the foregoing, Applicants believe that all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested. If the Examiner believes that a telephone conference would expedite prosecution of this application, please telephone the undersigned at (425) 455-5575.

Date: 11/2/04

Respectfully submitted,

  
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